MONTANA LEGISLATIVE HISTORY

Chapter 589 1991

Bill H _____ SB 26 Original bill & history ✓ C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	2/06	C	Hearing Date(s)	1/15	C
	4/04	C		1/22	C
		C			C
		C			C
Date Out		C	no exhibits w/ Senate hearings		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/08	3RD READING CONCURRED	98	0
	RETURNED TO SENATE		
3/14	SIGNED BY PRESIDENT		
3/15	SIGNED BY SPEAKER		
3/15	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 93	EFFECTIVE DATE: 10/01/91	

SB 26 INTRODUCED BY MANNING

REVISE BOARD OF INVESTMENTS TO INVEST PERMANENT COAL TAX TRUST FUND

BY REQUEST OF COAL TAX OVERSIGHT SUBCOMMITTEE

12/27	INTRODUCED		
12/31	REFERRED TO TAXATION		
1/02	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/09	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/15	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED	48	1
1/25	3RD READING PASSED	47	2
	TRANSMITTED TO HOUSE		
1/26	FIRST READING		
1/26	REFERRED TO TAXATION		
2/06	HEARING		
4/04	COMMITTEE REPORT—BILL CONCURRED		
4/11	2ND READING CONCURRED	97	1
4/12	3RD READING CONCURRED	95	2
	RETURNED TO SENATE		
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/20	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 589	EFFECTIVE DATE: 7/01/91	

SB 27 INTRODUCED BY SVRCEK

EXEMPT VEHICLES TRANSPORTING RECYCLABLE MATERIALS FROM CARRIER REGULATIONS

12/27	INTRODUCED		
12/31	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/02	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/07	FISCAL NOTE RECEIVED		
1/07	FISCAL NOTE PRINTED		
1/15	HEARING		
1/31	TABLED IN COMMITTEE		

SB 28 INTRODUCED BY WILLIAMS

CONCURRENCE OF STATE FUND WITH DEPARTMENT OF LABOR NEEDED TO SELF-INSURE WORK COMPENSATION

12/27	INTRODUCED		
12/31	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/02	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/08	FISCAL NOTE RECEIVED		
1/08	FISCAL NOTE PRINTED		
1/15	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/19	2ND READING PASSED	28	16

SENATE BILL NO. 26

INTRODUCED BY MANNING
BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

IN THE SENATE

DECEMBER 31, 1990	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
JANUARY 7, 1991	FIRST READING.
JANUARY 22, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 23, 1991	PRINTING REPORT.
	ON MOTION, CONSIDERATION PASSED.
JANUARY 24, 1991	SECOND READING, DO PASS.
JANUARY 25, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 2.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 25, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
JANUARY 26, 1991	FIRST READING.
APRIL 4, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 11, 1991	SECOND READING, CONCURRED IN.
APRIL 12, 1991	THIRD READING, CONCURRED IN. AYES, 95; NOES, 2.
	RETURNED TO SENATE.

IN THE SENATE

APRIL 13, 1991	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 26

INTRODUCED BY MANNING

BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STATE INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE MONTANA ECONOMY; ELIMINATING THE LOAN LOSS RESERVE FUND; AUTHORIZING MONTANA CAPITAL COMPANIES TO ISSUE AND SELL DEBENTURES TO THE PERMANENT COAL TAX TRUST FUND; ALLOWING AN INTEREST RATE REDUCTION INCENTIVE FOR JOB CREATION BY SMALL BUSINESSES; ALLOWING AN ADDITIONAL SERVICE FEE DISCOUNT TO FINANCIAL INSTITUTIONS ON CERTAIN SMALL BUSINESS LOAN PARTICIPATIONS; AMENDING SECTIONS 17-5-1506, 17-5-1525, 17-5-1526, 17-5-1527, 17-6-302, 17-6-305, 17-6-308, 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101, 90-3-525, 90-6-104, 90-8-102, AND 90-8-305, MCA; AND REPEALING SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND 17-6-315, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-5-1506, MCA, is amended to read:

"**17-5-1506. Bonds and notes for projects and major projects.** (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds ~~shall~~ must be authorized by resolutions of the board, bear a date, and mature at the

INTRODUCED BILL

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times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds ~~shall~~ must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 ~~and 17-5-1519~~ outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may

not exceed $75 million."

Section 2. Section 17-5-1525, MCA, is amended to read:

"17-5-1525. Bonds as legal investment. (1) Bonds issued by the board under the provisions of this part are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under 17-5-1505 through 17-5-1718 and 17-5-1521 through 17-5-1529 are securities ~~which~~ that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law."

Section 3. Section 17-5-1526, MCA, is amended to read:

"17-5-1526. Procedure prior to financing projects. (1)

The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor~~,--including--but--not--limited--to--a guaranty-by-the-board-pursuant-to-17-5-1519~~;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the

qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance ~~such~~ the project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county ~~must~~ shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government ~~must~~ shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public

hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the ~~board's guarantee under 17-5-1519 or the~~ capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."

Section 4. Section 17-5-1527, MCA, is amended to read:

"**17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor~~, including but not limited to a guaranty by the board pursuant to 17-5-1519~~;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt

service on bonds of the board issued to finance ~~such~~ the project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located ~~shall~~ must be notified, and within 14 days ~~must~~ shall advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government ~~must~~ shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice

must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by ~~the board's guarantee under 17-5-1519 or~~ the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

Section 5. Section 17-6-302, MCA, is amended to read:

"**17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution ~~which~~ that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other

ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(5) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(6) "Loan participation" means loans or portions thereof bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(7) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(8) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(9) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

~~(10) "Montana in-state investment fund" means the fund established by 17-6-306.~~

~~(11)~~(10) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 6. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of up to **twenty-five percent of the coal tax trust fund in the Montana economy.** (1) ~~Twenty-five percent of all revenue deposited after June 30, 1983, into~~ Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203~~(5)~~(6) ~~and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2) shall be invested~~ in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy ~~shall~~ must be considered.

(3) The legislature may provide additional procedures to implement this section."

Section 7. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) Except as provided in ~~subsection (4)~~ subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana ~~in-state~~

~~investment~~ permanent coal tax trust fund must be invested as authorized by rules adopted by the board. ~~For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee, in lieu of the actual acquisition of such loans or bonds.~~

~~(2) The board may use the in-state investment fund to guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given in consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain such ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed $3,000,000 with respect to the bonds or loans to finance the project.~~

~~(3)~~(2) The board may make loans from the ~~in-state investment~~ permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 ~~and the guaranty fund created pursuant to 17-5-1520~~ to establish

balances or restore deficiencies ~~therein~~ in the account. The board may agree in connection with the issuance of bonds or notes secured by ~~such~~ the account or fund to make ~~such~~ the loans. Loans must be on ~~such~~ terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

~~(4)~~(3) The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer $7.5 million of the ~~in-state investment~~ permanent coal tax trust fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201."

Section 8. Section 17-6-310, MCA, is amended to read:

"**17-6-310. No direct loans.** (1) The state may not use this revenue to make direct loans.

(2) ~~No money from the Montana in-state investment~~ The permanent coal tax trust fund may not be used to make direct loans to individual borrowers. The purchase of debentures

issued by a capital company and loans or portions ~~thereof~~ of loans originated by a financial institution that are sold to the trust are not direct loans."

Section 9. Section 17-6-311, MCA, is amended to read:

"**17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) and (3), no investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the ~~Montana-in-state-investment~~ permanent coal tax trust fund the total current accumulated amount of which exceeds ~~10%~~ 1% of the ~~prior-fiscal-year's-coal-severance-tax-revenue deposited-in-the-Montana-in-state-investment~~ permanent coal tax trust fund.

(2) Subsection (1) does not limit the board's authority to ~~guarantee--loans--or--bonds-or~~ make loans to the capital reserve account ~~and-guaranty-fund~~ as provided in 17-6-308(2) ~~and-(3)~~.

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the board may not exceed ~~10%~~ 1% of the Montana ~~in-state-investment~~ permanent coal tax trust fund at the time of purchase."

Section 10. Section 17-6-314, MCA, is amended to read:

"**17-6-314. Rate of return.** In calculating the rate of return for any Montana investment to be made from the

~~Montana-in-state-investment~~ permanent coal tax trust fund, the board shall consider the long-term benefit to the Montana economy and the additional service fee discount provided for in [section 18]."

Section 11. Section 17-6-322, MCA, is amended to read:

"**17-6-322. Report.** The board shall include in its annual report a section on the results of the previous year's operations of the ~~in-state~~ investment in the Montana economy from the permanent coal tax trust fund, as required in 17-6-305, including:

(1) financial statements audited by independent auditors;

(2) a summary report of loan activity; and

(3) a comparison of the ~~Montana--in-state--investment fund's~~ performance of the investments in the Montana economy in relation to the purposes contained in 17-6-303."

Section 12. Section 90-3-101, MCA, is amended to read:

"**90-3-101. Short title -- findings -- purpose.** (1) This chapter may be cited as the "Montana Science and Technology Financing Act".

(2) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening

and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

(d) the ~~in-state-investment~~ permanent coal tax trust fund created ~~through-adoption-of-Initiative-Measure-No.-95-by-the-voters-of-Montana-in-1982~~ by Article IX, section 5, of the Montana constitution is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana;

(e) the Science and Technology Development Board Seed Capital Bond Act contained provisions that were found to be unconstitutional by the Montana supreme court, and the 51st legislature of the state of Montana must remedy those defects through legislation; and

(f) the Montana science and technology development board has demonstrated success in forging a partnership among the private sector, the university community, and

government, and this success should be continued through an ongoing legislative commitment to the board's programs.

(3) The purposes of this chapter are to:

(a) strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities;

(b) provide a funding source for the board to make seed capital project loans;

(c) provide a mechanism for the board to use in making seed capital project loans; and

(d) provide a mechanism for the board to use in making research and development project loans, the funding source of which will be provided by separate legislation."

Section 13. Section 90-3-525, MCA, is amended to read:

"90-3-525. Deposit of payback -- seed capital and research and development project loans. (1) The payback of principal and earnings on a seed capital project loan executed under this chapter ~~must-be-administered-pursuant-to-section-17-6-306.~~

~~(2)--The~~ or the payback of principal and earnings on a research and development project loan must be deposited to the state special revenue fund to the credit of the science

and technology development account created in 90-3-305.

~~(3)~~(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the board. The paybacks include all those received after January 1, 1989."

Section 14. Section 90-6-104, MCA, is amended to read:

"**90-6-104. General powers of the board.** The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with

sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase

property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law ~~shall~~ must be deposited in the housing authority enterprise fund;

(14) sell its loans or securities to the federal

national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of ~~such~~ the sale;

(15) consent, whenever it ~~deems~~ considers it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges ~~shall be~~ are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses ~~which~~ that may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers

desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means; ~~and~~

~~(21) lend money to the board of investments to establish the Montana economic development guaranty fund created by 17-5-1520.~~"

Section 15. Section 90-8-102, MCA, is amended to read:

"**90-8-102. Declaration of policy.** (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by making tax credits available to taxpayers investing in Montana capital companies;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available

for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program ~~which~~ that gives priority to investments in capital companies in the order in which they are qualified will encourage prompt private investment in Montana businesses.

(4) The legislature further finds that use of money from the Montana ~~in-state--investment--fund--established--by 17-6-306~~ permanent coal tax trust fund to purchase debentures issued by a capital company will promote the business prosperity and economic welfare of the state and its citizens."

Section 16. Section 90-8-305, MCA, is amended to read:

"90-8-305. Sale of debentures. (1) A qualified Montana capital company is authorized to issue and sell debentures to the ~~in-state-investment~~ permanent coal tax trust fund ~~established-in-17-6-306~~.

(2) Proceeds received by a qualified Montana capital company from the sale of debentures authorized in subsection (1) must be invested in accordance with the provisions of 90-8-301, except that the time periods for making qualified investments must be calculated from the date the company sells the debentures to the ~~in-state-investment~~ permanent coal tax trust fund."

NEW SECTION. **Section 17. Job credit interest rate reduction for small business loan participations.** (1) A borrower who uses the proceeds of a small business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created over a 2-year period to employ a Montana resident. The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last completed fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average

wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) No job credit will be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and make application in writing, through its financial institution, to the board when the loan is delivered to the board or not later than 45 days after the first and second anniversary dates of the loan.

NEW SECTION. **Section 18. Incentive to financial institution for small business loan participation.** A financial institution that originates a small business loan no larger than 0.05% of the balance of the Montana permanent coal tax trust fund at the end of the last completed fiscal year is entitled to an additional service fee in the form of a discount equal to 0.5% of the board's participation in the loan. The board shall consider the additional service fee discount to the financial institution as part of the rate of return provided in 17-6-314.

NEW SECTION. **Section 19. Repealer.** Sections 17-5-1519, 17-5-1520, 17-6-306, and 17-6-315, MCA, are repealed.

NEW SECTION. **Section 20. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 22. Codification instruction.** [Sections 17 and 18] are intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [sections 17 and 18].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0026, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to revise the authority of the board of investments to invest the permanent coal tax trust fund; eliminate the authority of the board of investments to guarantee loans; eliminate the economic development guaranty fund and the in-state investment fund; allow the Board of Investments to invest up to 25% of the permanent coal tax trust fund in the Montana economy; eliminate the loan loss reserve fund; authorize Montana capital companies to issue and sell debentures to the permanent coal tax trust fund; allow an interest rate reduction incentive for job creation by small businesses; allow an additional service fee discount to financial institutions on certain small business loan participation.

ASSUMPTIONS:

1. Current law establishes the in-state investment fund as 25% of income to the coal trust. As of June 30, 1990, the in-state fund totaled $68 million.
2. This act would establish 25% of the entire coal trust as available for in-state investment. The amount available for in-state investment would increase to $112 million plus 12.5% of the FY91 coal tax receipts.
3. A greater number of in-state loans would be made at reduced interest rates.
4. SB0026 does not change the loan program because the Board of Investments manages the entire fund.
5. The proposed repeal of 17-6-315, MCA, would transfer the loan loss reserve to the general fund and future reserve revenue will go to the general fund. The loan loss reserve is assumed to grow at the same $100,000 rate as it did from FY89 to FY90.

FISCAL IMPACT:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:						
General Fund	0	425,000	425,000	0	100,000	100,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

A larger portion of the permanent coal trust is available for in-state loans at reduced interest rates, a maximum loan size is established by statute, and the job creation interest rate reduction is established in statute.

TECHNICAL NOTES:

The bill does not contain an effective date. If it were to be effective upon passage and approval, the general fund transfer will be made prior to fiscal year end rather than in FY92.

1-8-91

ROD SUNDSTED, BUDGET DIRECTOR — DATE
Office of Budget and Program Planning

1/10/91

RICHARD EDWARD MANNING, ~~PRIMARY SPONSOR~~ — DATE

Fiscal Note for SB0026, as introduced.

SB 26

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on January 15, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

Mike Halligan, Chairman (D)
Dorothy Eck, Vice Chairman (D)
Robert Brown (R)
Steve Doherty (D)
Delwyn Gage (R)
John Harp (R)
Francis Koehnke (D)
Gene Thayer (R)
Thomas Towe (D)
Van Valkenburg (D)
Bill Yellowtail (D)

Staff Present: Jeff Martin (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 26

Presentation and Opening Statement by Sponsor:

Senator Manning, District 18, sponsor of the bill, said the bill is being introduced at the request of the Coal Tax Oversight Subcommittee. It revises the authority of the Board of Investments to invest the Permanent Coal Tax Trust Fund, eliminates the authority of the Board of Investments to guarantee loans, eliminates the Economic Development Guaranty Fund and the In-state Investment Fund, allows the Board of Investments to invest up to 25% of the Permanent Coal Tax Trust Fund in the Montana economy, eliminates the Loan Loss Reserve Fund, authorizes Montana capital companies to issue and sell debentures to the Permanent Coal Tax Trust Fund, and allows an additional service fee discount to financial institutions on certain small business loan participations. The bill also repeals sections 17-5-1519, 17-6-306, and 17-6-315, MCA.

Proponents' Testimony:

Dave Lewis, Executive Director, Board of Investments, presented his testimony in support of the bill (Exhibit #1). He noted the bill revises the statutes to conform with the rules under which the Coal Tax Oversight Subcommittee operates.

Opponents' Testimony:
No one spoke in opposition to the bill.

Questions From Committee Members:

Senator Towe asked Mr. Lewis to explain the repealers.

Mr. Lewis said the sections being repealed (17-5-1519, 17-5-1510, and 17-5-1520, MCA) all relate to loan guarantees. Section 17-6-315, MCA deals with the loan loss guarantee fund. There is approximately $460,000 in the fund at this time. This is a separate guarantee fund for the coal tax loan fund. This is the only fund with a loan loss guarantee and there have been no losses to date. If there are losses in other funds, they are simply written off under current income. The $460,000 would be deposited in the general fund as the loan loss guarantee fund has been built over the years from income that has been withheld from the general fund over the years.

Senator Towe said he feels a very significant change is being made by no longer requiring a 25% investment but "allowing" an investment "up to 25%".

Mr. Lewis said the Board of Investments has been concerned over a technical violation of the statutes because there is $68 million in the in-state investment fund (that amount being equal to the 25%). The demand for loans has totalled $44 million. The remainder of the fund ($24 million) is invested in the short term investment pool. That $24 million is not invested in Montana, as required, because there has been no demand for the additional funds nor any loans offered to the Board.

Senator Towe expressed concern that the $44 million would plummet if the requirement to invest it in Montana were repealed. He felt the Board should be required to invest the money in Montana even if it means investing in home loans or Montana bank certificates of deposit. He felt it is up to the Board to develop sources to invest the money.

Mr. Lewis said there just is not the demand from banks for the money.

Senator Eck asked if micro-business investments could tap the same 25% in-state investment fund.

Mr. Lewis replied there is a coordinating clause in the micro-business bill. If SB 26 were to pass, they would simply take their money from the trust and it would be applied to the 25% of the trust that has been set aside for in-state investment.

Senator Eck asked if an review analysis of the past and current in-state loans which covers problems such as reasons loans are not granted could be provided to the Committee.

Mr. Lewis indicated he would provide that information.

Senator Gage asked if the bill should have a July 1 effective date.

Mr. Lewis said the original draft had that date and from an accounting standpoint it is very necessary. He asked that July 1 be amended into the bill.

Senator Doherty asked why the Supreme Court found the guarantee program unconstitutional.

Mr. Lewis said the issue was guaranteeing bonds and he offered to bring some information on the decision to the Committee.

Senator Towe said one of the repealers which takes out the in-state investment fund does refer to the 15% of the annual income earnings. He said there is reference to the 15% in Section 6. In the 1989 session the 15% from the permanent trust was taken and used for the general fund. He asked if the 15% was preserved for in-state investment or if it was taken as well.

Mr. Lewis said that 15% was taken as well. The in-state investment fund simply gets whatever proportion for in-state investment that the legislature sets for the entire fund.

Senator Van Valkenburg said the fiscal note indicates approximately $550,000 of new revenue will be generated for the general fund during the biennium. He asked Mr. Lewis to explain how that will occur.

Mr. Lewis explained that, to date, a portion of the application fees and interest on the loans has been diverted to the loan loss reserve. That is where the current balance of $425,000 has come from. The figure is derived by assuming the same rate of growth for next year as this year.

Senator Van Valkenburg asked if there would be reduced income as a result of an increase in the subsidized loan rate.

Mr. Lewis said that under the Board's rules, the reduced rate has been applied to the entire loan. It would not change what is currently being done. It is a matter of the legislature approving current procedure.

Senator Van Valkenburg said the fiscal note indicates that current law states that the in-state investment fund is 25% of the income to the coal trust as opposed to 25% of the entire trust. This bill has the effect of changing from 25% of the income to 25% of the total trust. As a result, a great deal more money will be made available for in-state investment at the discretion of the Board of Investments.

Mr. Lewis indicated that is correct. The Board feels it is appropriate to consider the entire trust amount. From a diversification standpoint and for safety of principal and maintenance of income the 25% should not be exceeded.

Senator Eck said the problem with new business incentives is outreach, publicity, and promotion of the funds. She asked if that is being adequately pursued.

Forrest Boles, Montana Chamber of Commerce, said he was not sure of the extent of the publicity but knew that all seven major local development corporations are aware of the fund. He said there is a concern about some small local capital companies having to reach a certain level of investment before they can participate, however, that will probably be addressed in some other legislation.

Senator Towe commented on the enormous amount of bookwork entailed in obtaining a loan from the in-state investment fund. He said there are plenty of loans out there and a good secondary market if the system can be modified to make the application and granting process operate more efficiently. He noted the retirement funds were invested somewhere between 50% - 70% in home loans before the Board of Investments was created. Now the money is invested primarily out of state. Along with the job credit, a sufficiently low interest rate should attract many more loans applications.

Mr. Lewis said the average yield on the coal tax loans is about 8.7%. The rest of the coal trust portfolio runs about 10%. The Board of Investments has established a prudent level of incentive without exceeding the constitutional issue of maintaining the flow of revenue. He felt this is an important public policy issue and the legislature is the proper body to deal with it. He further noted there are $120 million in residential loans in the Board's portfolio. That is a major

secondary market for the state, but the state market is only one of many secondary residential loan markets. He further pointed out the outreach effort is very comprehensive and all lenders in the state are well informed of the Board of Investments' loan market capabilities.

Closing by Sponsor:

Senator Manning said this is a good bill which will create incentives for business expansion in the state. There is a great need to develop new employment opportunities and this bill is one vehicle to aid in that development.

HEARING ON SENATE BILL 41

Presentation and Opening Statement by Sponsor:

Senator Brown, District 2, said the bill is introduced at the request of the Department of Revenue. The bill transfers the collection and assessment on passenger tramways from the Department of Revenue to the Department of Commerce. There are fifteen tramways in the state requiring a yearly inspection which is the responsibility of the Department of Commerce. The assessment is 1/4 of .01% of the gross receipts of all passenger tramways or a minimum of $100 for a total of approximately $28,000 for 1990. The whole amount goes to the Department of Commerce to fund the inspections. Currently, the Department of Revenue collects the fee and then transfers it to Commerce. Under the provisions of the bill, the fee collection and inspections would all be a function of the Commerce Department.

Proponents' Testimony:

Jeff Miller, Administrator, Income and Miscellaneous Tax Division, Department of Revenue, said Senator Brown had correctly summarized the bill. The bill is motivated by taxpayer convenience. All other aspects of tramway regulation are handled by Commerce. He said both agencies and the taxpayers would be better served by streamlining the process in this manner.

Jim Kimball, Administrator, Public Safety Division, Department of Commerce, expressed support for the bill. The Tramway Safety Board oversees this operation and the supporting budget. He felt this change allows for the most efficient operation of the program.

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on January 22, 1991, at 8:00 a.m.

ROLL CALL

Members Present:
Mike Halligan, Chairman (D)
Dorothy Eck, Vice Chairman (D)
Robert Brown (R)
Steve Doherty (D)
Delwyn Gage (R)
John Harp (R)
Francis Koehnke (D)
Gene Thayer (R)
Thomas Towe (D)
Van Valkenburg (D)
Bill Yellowtail (D)

Members Excused: None

Staff Present: Jeff Martin (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 96

Presentation and Opening Statement by Sponsor:

Senator Beck, District 24, sponsor, said the bill designates a portion of the lottery revenue for economic development. The money would be distributed back to the county where the money was raised. He referred the members to the fiscal note.

Mr. Adams replied it would have to be looked at on a case by case basis, but he would still have to go after the person who was responsible.

Senator Doherty said he had the same worry as Senator Towe when he was looking at the amendments. But he felt, as Senator Van Valkenburg has said, we need to identify the person who was in on the "scam" and go after him. He felt if the officers have absconded with the funds and the treasurer is unable to pay, the treasurer has not failed to pay. The corporation has failed to pay and the onus is on the corporation.

Senator Towe said the whole purpose of the bill is to make the individual liable.

The motion by Senator Van Valkenburg that SB 70 Do Pass As Amended CARRIED with Senator Towe voting no.

EXECUTIVE ACTION ON SENATE BILL 81

Amendments, Discussion, and Votes:

Senator Harp moved to adopt the amendments as prepared by the Committee Researcher, Jeff Martin (Exhibit #6).

Mr. Martin explained the amendments include an immediate effective date and a retroactive applicability date.

The motion CARRIED with Senators Brown and Gage absent.

Recommendation and Vote:

Senator Harp moved SB 81 Do Pass As Amended. The motion CARRIED with Senators Brown and Gage absent.

EXECUTIVE ACTION ON SENATE BILL 26

Amendments, Discussion, and Votes:

Senator Harp moved the adoption of amendments providing an effective date (Exhibit #7).

The motion CARRIED unanimously.

Senator Towe moved to amend the bill as per the amendments in Exhibit #8.

Senator Towe explained the amendments would keep the base from expanding to 25% from 15% and require that all the money in the trust be invested in Montana.

Senator Towe said the record should reflect that he has an integral interest in the First National Bank of Wibaux.

Senator Harp said he has reviewed a list of investments made by the Board of Investments and they are for the most part very sound investments. However, he said there are some loans made that he would consider questionable. He felt strongly that he was not willing to risk the State's money in unsafe loans just to reach the maximum in-state investment allowed.

Senator Towe responded he would not want the money invested in shaky loans just to ensure that all the money is invested in Montana. He said the money can be invested in secondary markets and Montana banks.

Senator Van Valkenburg said by limiting the investment base the general fund stands to lose $240,000 in interest income. He said the Committee should take a firm stance against eroding the income base of the general fund.

Senator Harp warned against making poor investments and creating a mini-S & L problem with the trust funds.

Senator Towe's motion to accept the amendments FAILED on a roll call vote (Exhibit #9)

Senator Towe moved to amend the bill on page 12, lines 7 and 22 to require the Board of Investments to report to every session of the legislature on the investments they have made during the biennium.

The motion CARRIED unanimously with Senator Brown absent.

Recommendation and Vote:

Senator Van Valkenburg moved Senate Bill 26 Do Pass As Amended. The motion CARRIED with Senators Towe and Yellowtail voting no.

EXECUTIVE ACTION ON SENATE BILL 86

Motion:

Senator Gage moved to adopt the amendments as presented in Exhibit #10. Senator Gage said the amendments correct the situation in which the dates in the bill would cut off six months of drilling operations that may have qualified for new

SENATE BILL NO. 26

INTRODUCED BY MANNING

BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STAT INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE MONTANA ECONOMY; REQUIRING THE BOARD OF INVESTMENTS TO REPORT BIENNIALLY TO THE LEGISLATURE; ELIMINATING THE LOAN LOSS RESERVE FUND; AUTHORIZING MONTANA CAPITAL COMPANIES TO ISSUE AND SELL DEBENTURES TO THE PERMANENT COAL TAX TRUST FUND; ALLOWING AN INTEREST RATE REDUCTION INCENTIVE FOR JOB CREATION BY SMALL BUSINESSES; ALLOWING AN ADDITIONAL SERVICE FEE DISCOUNT TO FINANCIAL INSTITUTIONS ON CERTAIN SMALL BUSINESS LOAN PARTICIPATIONS; AMENDING SECTIONS 17-5-1506, 17-5-1525, 17-5-1526, 17-5-1527, 17-6-302, 17-6-305, 17-6-308, 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101, 90-3-525, 90-6-104, 90-8-102, AND 90-8-305, MCA; AND REPEALING SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND 17-6-315, MCA; AND PROVIDING AN EFFECTIVE DATE."

SB 0026/02

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-5-1506, MCA, is amended to read:

"17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

THIRD READING

(4) The notes and bonds ~~shall~~ must be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds ~~shall~~ must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 ~~and--17-5-1519~~ outstanding at any one time, except bonds as to which the board's obligations have been satisfied and

discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $75 million."

Section 2. Section 17-5-1525, MCA, is amended to read:

"17-5-1525. Bonds as legal investment. (1) Bonds issued by the board under the provisions of this part are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under 17-5-1505 through 17-5-1718 and 17-5-1521 through 17-5-1529 are securities ~~which~~ that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law."

Section 3. Section 17-5-1526, MCA, is amended to read:

"**17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor~~;--including--but--not--limited--to--a guaranty-by-the-board-pursuant-to-17-5-1519~~;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the

qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance ~~such~~ the project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county ~~must~~ shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government ~~must~~ shall notify the board of its

determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the ~~board's guarantee under 17-5-1519 or the~~ capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."

Section 4. Section 17-5-1527, MCA, is amended to read:

"**17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a

project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor; ~~including but not limited to a guaranty by the board pursuant to 17-5-1519~~;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement,

lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance ~~such~~ the project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located ~~shall~~ must be notified, and within 14 days ~~must~~ shall advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government ~~must~~ shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice mus be given, at least once a week for 2 weeks prior to the date set for the hearing, by

publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by ~~the board's guarantee under 17-5-1519 or~~ the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

Section 5. Section 17-6-302, MCA, is amended to read:

"17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution ~~which~~ that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(5) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(6) "Loan participation" means loans or portions thereof bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(7) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(8) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(9) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

~~(10) "Montana in-state investment fund" means the fund established by 17-6-306.~~

~~(11)~~(10) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 6. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of up to twenty-five percent of the coal tax trust fund in the Montana economy -- REPORT BY THE BOARD. (1) ~~Twenty-five percent of all revenue deposited after June 30, 1983, into~~ Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203~~(5)~~(6) ~~and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2) shall be~~ invested in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy ~~shall~~ must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) THE BOARD SHALL REPORT BIENNIALLY TO THE LEGISLATURE ON THE INVESTMENTS MADE UNDER THIS SECTION."

Section 7. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) Except as provided in ~~subsection--(4)~~ subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana ~~in-state investment~~ permanent coal tax trust fund must be invested as authorized by rules adopted by the board. ~~For--purposes--of this-section,-"investment"-includes-the-guaranty-of-loans-or bonds--in--consideration--for--a--fee,-in-lieu-of-the-actual acquisition-of-such-loans-or-bonds.~~

~~(2)--The-board-may-use-the-in-state-investment--fund--to guarantee--loans--or--bonds--issued--under-the-provisions-of 17-5-1501-through-17-5-1529,-Title-17,-chapter-5,--part--16, or--Title--90,--chapter--7.--Each--guaranty-must-be-given-in consideration-of-a-fee.-The-fees-must-be-paid-to-the--board. The--guaranty-must-provide-directly-or-by-separate-agreement that-the-board-is-fully-subrogated--to--the--rights--of--the obligee--under--the--loan--or--bond.-The-board-shall-by-rule establish-the-maximum-ratio-between-guaranty-funds-available and-loans-or-bonds-to-be-guaranteed.-The-board-may--covenant in--bond--issues-to-maintain-such-ratio.--Unless-bonds-issued to-finance-a-project-are-secured-by-a-common-capital-reserve account-and-a-common-guaranty-fund,-the--maximum--amount--of the--guaranty--authorized--by--this--section--may-not-exceed $3,000,000-with-respect-to-the-bonds-or-loans-to-finance-the project.~~

~~(3)~~(2) The board may make loans from the ~~in-state investment~~ permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 ~~and--the guaranty-fund-created-pursuant--to--17-5-1520~~ to establish balances or restore deficiencies ~~therein~~ in the account. The board may agree in connection with the issuance of bonds or notes secured by ~~such~~ the account or fund to make ~~such~~ the loans. Loans must be on ~~such~~ terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

~~(4)~~(3) The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer $7.5 million of the ~~in-state--investment~~ permanent coal tax trust fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201."

Section 8. Section 17-6-310, MCA, is amended to read:

"17-6-310. No direct loans. (1) The state may not use

this revenue to make direct loans.

(2) ~~No-money-from-the-Montana-in-state--investment~~ The permanent coal tax trust fund may not be used to make direct loans to individual borrowers. The purchase of debentures issued by a capital company and loans or portions ~~thereof~~ of loans originated by a financial institution that are sold to the trust are not direct loans."

Section 9. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. (1) Except as provided in subsections (2) and (3), no investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the Montana--~~in-state--investment~~ permanent coal tax trust fund the total current accumulated amount of which exceeds ~~10%~~ 1% of the ~~prior-fiscal-year's-coal-severance-tax-revenue deposited--in-the-Montana-in-state-investment~~ permanent coal tax trust fund.

(2) Subsection (1) does not limit the board's authority to ~~guarantee-loans-or-bonds-or~~ make loans to the capital reserve account ~~and-guaranty-fund~~ as provided in 17-6-308(2) ~~and-(3)~~.

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the board may not exceed ~~10%~~ 1% of the Montana ~~in-state--investment~~ permanent

coal tax trust fund at the time of purchase."

Section 10. Section 17-6-314, MCA, is amended to read:

"17-6-314. Rate of return. In calculating the rate of return for any Montana investment to be made from the ~~Montana--in-state--investment~~ permanent coal tax trust fund, the board shall consider the long-term benefit to the Montana economy and the additional service fee discount provided for in [section 18]."

Section 11. Section 17-6-322, MCA, is amended to read:

"17-6-322. Report. The board shall include in its annual report a section on the results of the previous year's operations of the ~~in-state~~ investment in the Montana economy from the permanent coal tax trust fund, as required in 17-6-305, including:

(1) financial statements audited by independent auditors;

(2) a summary report of loan activity; and

(3) a comparison of the ~~Montana-in-state-investment fund's~~ performance of the investments in the Montana economy in relation to the purposes contained in 17-6-303."

Section 12. Section 90-3-101, MCA, is amended to read:

"90-3-101. Short title -- findings -- purpose. (1) This chapter may be cited as the "Montana Science and Technology Financing Act".

(2) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

(d) the ~~in-state--investment~~ permanent coal tax trust fund created ~~through-adoption-of-Initiative-Measure--No.--95 by--the--voters-of-Montana-in-1982~~ by Article IX, section 5, of the Montana constitution is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana;

(e) the Science and Technology Development Board Seed Capital Bond Act contained provisions that were found to be unconstitutional by the Montana supreme court, and the 51st legislature of the state of Montana must remedy those

defects through legislation; and

(f) the Montana science and technology development board has demonstrated success in forging a partnership among the private sector, the university community, and government, and this success should be continued through an ongoing legislative commitment to the board's programs.

(3) The purposes of this chapter are to:

(a) strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities;

(b) provide a funding source for the board to make seed capital project loans;

(c) provide a mechanism for the board to use in making seed capital project loans; and

(d) provide a mechanism for the board to use in making research and development project loans, the funding source of which will be provided by separate legislation."

Section 13. Section 90-3-525, MCA, is amended to read:

"90-3-525. Deposit of payback -- seed capital and research and development project loans. (1) The payback of principal and earnings on a seed capital project loan executed under this chapter ~~must-be-administered-pursuant-to~~

~~section 17-6-306.~~

~~(2)~~ ~~The~~ or the payback of principal and earnings on a research and development project loan must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

~~(3)~~(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the board. The paybacks include all those received after January 1, 1989."

Section 14. Section 90-6-104, MCA, is amended to read:

"90-6-104. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any

persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of

redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all

investment income from funds of the board less the cost for investment as prescribed by law ~~shall~~ must be deposited in the housing authority enterprise fund;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of ~~such~~ the sale;

(15) consent, whenever it ~~deems~~ considers it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges ~~shall~~ be are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses ~~which~~ that may be

incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means; ~~and~~

~~(21) lend money to the board of investments to establish the Montana economic development guaranty fund created by 17-5-1520.~~"

Section 15. Section 90-8-102, MCA, is amended to read:

"**90-8-102. Declaration of policy.** (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden

of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by

making tax credits available to taxpayers investing in Montana capital companies;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program ~~which~~ that gives priority to investments in capital companies in the order in which they are qualified will encourage prompt private investment in Montana businesses.

(4) The legislature further finds that use of money from the Montana ~~in-state--investment-fund-established-by 17-6-306~~ permanent coal tax trust fund to purchase debentures issued by a capital company will promote the business prosperity and economic welfare of the state and its citizens."

Section 16. Section 90-8-305, MCA, is amended to read:

"90-8-305. Sale of debentures. (1) A qualified Montana capital company is authorized to issue and sell debentures to the ~~in-state--investment~~ permanent coal tax trust fund ~~established-in-17-6-306~~.

(2) Proceeds received by a qualified Montana capital company from the sale of debentures authorized in subsection (1) must be invested in accordance with the provisions of

90-8-301, except that the time periods for making qualified investments must be calculated from the date the company sells the debentures to the ~~in-state--investment~~ permanent coal tax trust fund."

NEW SECTION. **Section 17.** Job credit interest rate reduction for small business loan participations. (1) A borrower who uses the proceeds of a small business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created over a 2-year period to employ a Montana resident. The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last completed fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum

of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) No job credit will be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and make application in writing, through its financial institution, to the board when the loan is delivered to the board or not later than 45 days after the first and second anniversary dates of the loan.

NEW SECTION. **Section 18.** Incentive to financial institution for small business loan participation. A financial institution that originates a small business loan no larger than 0.05% of the balance of the Montana permanent coal tax trust fund at the end of the last completed fiscal year is entitled to an additional service fee in the form of a discount equal to 0.5% of the board's participation in the loan. The board shall consider the additional service fee

discount to the financial institution as part of the rate of return provided in 17-6-314.

NEW SECTION. **Section 19.** Repealer. Sections 17-5-1519, 17-5-1520, 17-6-306, and 17-6-315, MCA, are repealed.

NEW SECTION. **Section 20.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 21.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 22.** Codification instruction. [Sections 17 and 18] are intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [sections 17 and 18].

NEW SECTION. **SECTION 23.** EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1991.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By DAN HARRINGTON, CHAIR, on February 6, 1991, at 9:00 a.m.

ROLL CALL

Members Present:

Dan Harrington, Chairman (D)
Bob Ream, Vice-Chairman (D)
Ben Cohen, Vice-Chair (D)
Ed Dolezal (D)
Jim Elliott (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
Marian Hanson (R)
David Hoffman (R)
Jim Madison (D)
Ed McCaffree (D)
Bea McCarthy (D)
Tom Nelson (R)
Mark O'Keefe (D)
Bob Raney (D)
Ted Schye (D)
Barry "Spook" Stang (D)
Fred Thomas (R)
Dave Wanzenried (D)

Staff Present: Lee Heiman, Legislative Council
Lois O'Connor, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 70

An act clarifying that the officer or employee of a corporation responsible for collecting and paying withholding tax who fail to collect and pay the tax is liable to the state for the tax including all penalties.

Presentation and Opening Statement by Sponsor:

SEN. GAGE, Senate District 5, Cut Bank, stated SB 70 said that everything of significance that was strickened from the bill has been put back in. The big change is Page 2, Line 3, the word

year. It still requires an organizational hearing except that it will the day that they have a hearing set. **REP. STANG** said that an organizational meeting could be held at any time, but then you would have to have a meeting for the hearings the next day.

ACTION ON HB 392 WAS SUSPENDED UNTIL AFTER THE HEARING ON SB 26.

HEARING ON SB 26

An act to revise the authority of the board of investments to invest the permanent coal tax trust fund into the Montana economy.

Presentation and Opening Statement by Sponsor:

REP. MANNING, Senate District 18, Great Falls, provided written testimony. **EXHIBIT 5**

Proponents' Testimony:

F. H. "Buck" Boles, Montana Chamber of Commerce, stated the Chamber supported this bill in the Senate. SB 26 provided an incentive program for the small business.

Opponents' Testimony: None

Questions From Committee Members:

REP. COHEN asked if anyone has heard from the Board of Investments, and if not, he would direct his questions to **SEN. MANNING. REP. COHEN** said it was his understanding that the way the Montana capital company's legislation is written was used in a manner not conceived by the Legislature when we created that act. There has been a question about amending it and asked if **SEN. MANNING** was aware of the problems he was talking about. **SEN. MANNING** said the Supreme Court found out that there were problems and made some recommendations and suggestions. Those became the reasons for this bill and they will be corrected. **REP. COHEN** said SB 26 allows the Board of Investments to invest up to 25% of the coal tax trust fund into the Montana economy, and asked why doesn't "require" the Board of Investments to invest up to 25%. **SEN. MANNING** according to **Dave Lewis, DOR,** was that they were unable to get 25% of the coal trust fund invested. They tried but were not successful. There was an amendment in the Senate which would have "required" them to invest, but it was defeated soundly.

Referring to Number 5 of the fiscal note, **REP. COHEN** asked why the loan loss reserves were not returned to the trust instead of the General Fund. **SEN. MANNING** said **Dave Lewis, DOR,** could answer that but he was not present.

Closing by Sponsor:

SEN. MANNING said the passage of SB 26 could create jobs in Montana because the small business are always looking for tax incentives to create jobs. He urged the committee's support and asked that **REP. M. HANSON** carry the bill.

Announcements: **CHAIR HARRINGTON** said SB 26 would be referred to the Income/Severance Tax Subcommittee and HB 441 to the Property Tax Subcommittee.

EXECUTIVE ACTION ON SB 70

Motion/Vote: **REP. STANG MOVED SB 70 BE CONCURRED IN.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 392

Motion/Vote: **REP. FAGG MADE A SUBSTITUTE MOTION THAT HB 392 DO PASS AS AMENDED.** Motion carried 19 to 2 with **REPS. STANG** and **ELLIOTT** voting no.

ADJOURNMENT

Adjournment: 10:25 a.m.

DAN HARRINGTON, Chair

LOIS O'CONNOR, Secretary

DH/lo

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL DATE 2/6/91

NAME	PRESENT	ABSENT	EXCUSED
REP. DAN HARRINGTON	✓		
REP. BEN COHEN, VICE-CHAIRMAN	✓		
REP. BOB REAM, VICE-CHAIRMAN	✓		
REP. ED DOLEZAL	✓		
REP. JIM ELLIOTT	✓	+	
REP. ORVAL ELLISON	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓	+	
REP. MARIAN HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. BEA MCCARTHY	✓	+	
REP. TOM NELSON	✓	+	
REP. MARK O'KEEFE	✓	+	
REP. BOB RANEY	✓		
REP. TED SCHYE	✓	+	
REP. BARRY "SPOOK" STANG	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		

DATE 2-6-91
HB SB-26

DEPARTMENT OF COMMERCE
BOARD OF INVESTMENTS

STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 442-1970 TELEFAX (406) 449-6579 HELENA, MONTANA 59620

SENATE BILL 26

Background:

Senate Bill 26 originated from discussions the Board of Investments had with the Legislative Audit Staff during the annual audit in the summer of 1989. The audit staff pointed out the need to revise the coal tax loan statutes to reflect:

1) the Supreme Court decision that found the Board's loan guarantee program unconstitutional,

2) the need to establish legislative authority to apply the job creation interest rate credit to all coal tax loans,

3) and the need to establish in statute a maximum size for coal tax loans.

As a result of these discussions, the Board approached the Coal Tax Oversight Subcommittee and initiated discussions concerning management of the loan program. These discussions with the subcommittee led to Senate Bill 26.

Discussion of Sections

Sections 1 through 4

These sections are amended only to reflect the elimination of the guarantee program found unconstitutional by the Supreme Court and to coordinate statutory references.

Sections 5 and 6

These sections eliminate the old In-State Investment Fund and recognize that the Board should endeavor to invest up to 25 percent of the total Permanent Trust Fund in the Montana economy. The effect of this change is to statutorily recognize what the Board established by policy. The statutory change will allow the Board to apply the reduced rate of interest to a larger number of loans. The current In-State Investment Fund totalled $68 million as of June 30, 1991. This bill would have increased that to $112 million as of June 30. The Board had $44.5 million of commercial loans outstanding as of December 30, 1990. That amounted to $37 million in the In-State Funds and $8.5 in the rest of the Coal Trust Fund.

Sections 7 and 8

This eliminates the guarantee provisions found unconstitutional and revises the language of the sections to reflect the change in terminology proposed in the previous sections.

Section 9

This establishes the limit for a single loan at one percent of the total trust. This would limit a loan to $4.6 million at the current time. Larger loans could be made if they were booked in other funds, but the reduced interest rate could only be applied to the amount booked in the Coal Trust Fund.

Section 10 through 16

These sections revise references to the In-State Fund in related statutes.

Section 17

This section provides statutory authority for the job credit interest rate reduction the Board has established. The intent of this program is to create jobs in Montana by allowing a .05 percent interest rate reduction for each qualifying new job created in the state. The maximum interest rate reduction is 2.50 percent.

Section 18

This is a new section suggested by the Coal Tax Oversight Subcommittee and designed to provide an incentive to lenders to originate small loans for sale to the Board. This provides the lender with an additional .5 percent service fee for loans smaller than .05 percent of the trust (currently about $225,00). The Board is not normally offered loans of that size as most lenders would prefer to keep those in their own portfolio.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. SB 26

DATE 2/6/91 SPONSOR(S) Sen. Manning

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Harold Robbins	Mont. Pet. Corp		
J.H. Buck Boles	MT CHAMBER	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By DAN HARRINGTON, CHAIR, on April 4, 1991, at 9:00 a.m.

ROLL CALL

Members Present:

Dan Harrington, Chairman (D)
Bob Ream, Vice-Chairman (D)
Ben Cohen, Vice-Chair (D)
Ed Dolezal (D)
Jim Elliott (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
Marian Hanson (R)
David Hoffman (R)
Jim Madison (D)
Ed McCaffree (D)
Bea McCarthy (D)
Tom Nelson (R)
Mark O'Keefe (D)
Bob Raney (D)
Ted Schye (D)
Barry "Spook" Stang (D)
Fred Thomas (R)
Dave Wanzenried (D)

Staff Present: Lee Heiman, Legislative Council
Lois O'Connor, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 151

Presentation and Opening Statement by Sponsor:

SEN. ECK, Senate District 40, Bozeman, stated SB 151 will extend the medicaid eligibility to pregnant women and to infants if the family income does not exceed 185% of the federal poverty threshold. An example of a family of three is if you have two parents and the women is pregnant. It is easy to assume that if their income is less than $19,000 a year, they will not be able to afford insurance unless their employer provides it. SB 151 would make medicaid services available.

EXECUTIVE ACTION ON SB 69

Motion/Vote: **REP. FAGG MOVED SB 69 BE CONCURRED IN.** Motion carried 20 to 1 with **REP. STANG** voting no.

EXECUTIVE ACTION ON SB 26

Motion/Vote: **REP. STANG MOVED SB 26 BE CONCURRED IN.** Motion carried 20 to 1 with **REP. GILBERT** voting no.

EXECUTIVE ACTION ON SB 288

Motion/Vote: **REP. McCARTHY MOVED SB 288 BE CONCURRED IN.** Motion carried unanimously.

HEARING ON SB 299

Presentation and Opening Statement by Sponsor:

REP. REAM made the opening statement for **SEN. HALLIGAN, Senate District 29, Missoula,** the sponsor of SB 299. He stated that the proponent would address the bill.

Proponents' Testimony:

Ward Shanahan, Attorney, Helena, said SB 299 is a bill to amend the present provisions involving interlocutory appeals from tax proceedings. This is a matter that has been wrangled over between lawyers, accountants, and DOR for many years. They got together and drafted this bill which corrects the procedural problem which will allow you to hear a tax case without having to go through a factual hearing before the state takes the appeal. He urged the committee's support.

Opponents' Testimony: None

Questions From Committee Members:

REP. RANEY asked **Ward Shanahan** what an interlocutory adjudication was. **Mr. Shanahan** said that when a tax proceeding is started, it begins with an informal hearing before the DOR. This is the opportunity for an informal discussion that either hardens or softens the discussion between DOR and the taxpayer. When you get to the end of that discussion, you have to go to the state Tax Appeal Board. The Tax Appeal Board is not composed of lawyers, and the courts have held that it doesn't have the right to make rulings on what statutes and regulations mean. The Tax Appeal Board hears the factual issues about property valuations. Interlocutory adjudication is a way of trying to speed up the proceedings and is called interlocutory because it takes place before a final decision on an issue.

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL **DATE** 4-4-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DAN HARRINGTON	✓		
REP. BEN COHEN, VICE-CHAIRMAN	✓		
REP. BOB REAM, VICE-CHAIRMAN	✓		
REP. ED DOLEZAL	✓		
REP. JIM ELLIOTT	✓		
REP. ORVAL ELLISON	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. MARIAN HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. BEA MCCARTHY	✓		
REP. TOM NELSON	✓		
REP. MARK O'KEEFE	✓		
REP. BOB RANEY	✓		
REP. TED SCHYE	✓		
REP. BARRY "SPOOK" STANG	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		

HOUSE STANDING COMMITTEE REPORT

April 4, 1991

Mr. Speaker: We, the committee on Taxation report that Senate Bill 26 (third reading copy -- blue) be concurred in .

Signed: _____
Dan Harrington, Chairman

Carried by: Rep. Stang

SENATE BILL NO. 26

INTRODUCED BY MANNING

BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STAT INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE MONTANA ECONOMY; REQUIRING THE BOARD OF INVESTMENTS TO REPORT BIENNIALLY TO THE LEGISLATURE; ELIMINATING THE LOAN LOSS RESERVE FUND; AUTHORIZING MONTANA CAPITAL COMPANIES TO ISSUE AND SELL DEBENTURES TO THE PERMANENT COAL TAX TRUST FUND; ALLOWING AN INTEREST RATE REDUCTION INCENTIVE FOR JOB CREATION BY SMALL BUSINESSES; ALLOWING AN ADDITIONAL SERVICE FEE DISCOUNT TO FINANCIAL INSTITUTIONS ON CERTAIN SMALL BUSINESS LOAN PARTICIPATIONS; AMENDING SECTIONS 17-5-1506, 17-5-1525, 17-5-1526, 17-5-1527, 17-6-302, 17-6-305, 17-6-308, 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101, 90-3-525, 90-6-104, 90-8-102, AND 90-8-305, MCA; AND REPEALING SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND 17-6-315, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-5-1506, MCA, is amended to read:

"17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

REFERENCE BILL

(4) The notes and bonds ~~shall~~ must be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds ~~shall~~ must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 ~~and--17-5-1519~~ outstanding at any one time, except bonds as to which the board's obligations have been satisfied and

discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $75 million."

Section 2. Section 17-5-1525, MCA, is amended to read:

"17-5-1525. Bonds as legal investment. (1) Bonds issued by the board under the provisions of this part are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under 17-5-1505 through 17-5-1718 and 17-5-1521 through 17-5-1529 are securities ~~which~~ that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law."

Section 3. Section 17-5-1526, MCA, is amended to read:

"**17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor~~,--including--but--not--limited--to--a guaranty-by-the-board-pursuant-to-17-5-1519~~;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the

qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance ~~such~~ the project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county ~~must~~ shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government ~~must~~ shall notify the board of its

determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the ~~board's guarantee under 17-5-1519 or the~~ capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."

Section 4. Section 17-5-1527, MCA, is amended to read:

"17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a

project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor; ~~including but not limited to a guaranty by the board pursuant to 17-5-1519~~;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement,

lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance ~~such~~ the project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located ~~shall~~ must be notified, and within 14 days ~~must~~ shall advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government ~~must~~ shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice mus be given, at least once a week for 2 weeks prior to the date set for the hearing, by

publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by ~~the board's guarantee under 17-5-1519 or~~ the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

Section 5. Section 17-6-302, MCA, is amended to read:

"17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution ~~which~~ that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(5) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(6) "Loan participation" means loans or portions thereof bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(7) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(8) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(9) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

~~(10) "Montana in-state investment fund" means the fund established by 17-6-306.~~

~~(11)~~(10) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 6. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of** up to **twenty-five percent of the coal tax trust fund in the Montana economy** -- REPORT BY THE BOARD. (1) ~~Twenty-five percent of all revenue deposited after June 30, 1983, into~~ Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203~~(5)~~(6) ~~and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2) shall be invested~~ in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy ~~shall~~ must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) THE BOARD SHALL REPORT BIENNIALLY TO THE LEGISLATURE ON THE INVESTMENTS MADE UNDER THIS SECTION."

Section 7. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) Except as provided in ~~subsection--(4)~~ subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana ~~in-state investment~~ permanent coal tax trust fund must be invested as authorized by rules adopted by the board. ~~For--purposes--of this-section,-"investment"-includes-the-guaranty-of-loans-or bonds--in--consideration--for--a--fee,-in-lieu-of-the-actual acquisition-of-such-loans-or-bonds.~~

~~(2)--The-board-may-use-the-in-state-investment--fund--to guarantee--loans--or--bonds--issued--under-the-provisions-of 17-5-1501-through-17-5-1529,-Title-17,-chapter-5,--part--16, or--Title--90,--chapter--7,--Each--guaranty-must-be-given-in consideration-of-a-fee.-The-fees-must-be-paid-to-the--board. The--guaranty-must-provide-directly-or-by-separate-agreement that-the-board-is-fully-subrogated--to--the--rights--of--the obligee--under--the--loan--or--bond.-The-board-shall-by-rule establish-the-maximum-ratio-between-guaranty-funds-available and-loans-or-bonds-to-be-guaranteed.-The-board-may--covenant in--bond--issues-to-maintain-such-ratio.-Unless-bonds-issued to-finance-a-project-are-secured-by-a-common-capital-reserve account-and-a-common-guaranty-fund,-the--maximum--amount--of the--guaranty--authorized--by--this--section--may-not-exceed $3,000,000-with-respect-to-the-bonds-or-loans-to-finance-the project.~~

~~(3)~~(2) The board may make loans from the ~~in-state investment~~ permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 ~~and--the guaranty-fund-created-pursuant--to--17-5-1520~~ to establish balances or restore deficiencies ~~therein~~ in the account. The board may agree in connection with the issuance of bonds or notes secured by ~~such~~ the account or fund to make ~~such~~ the loans. Loans must be on ~~such~~ terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

~~(4)~~(3) The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer $7.5 million of the ~~in-state--investment~~ permanent coal tax trust fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201."

Section 8. Section 17-6-310, MCA, is amended to read:

"17-6-310. No direct loans. (1) The state may not use

this revenue to make direct loans.

(2) ~~No-money-from-the-Montana-in-state--investment~~ The permanent coal tax trust fund may not be used to make direct loans to individual borrowers. The purchase of debentures issued by a capital company and loans or portions ~~thereof~~ of loans originated by a financial institution that are sold to the trust are not direct loans."

Section 9. Section 17-6-311, MCA, is amended to read:

"**17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) and (3), no investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the ~~Montana--in-state--investment~~ permanent coal tax trust fund the total current accumulated amount of which exceeds ~~10%~~ 1% of the ~~prior-fiscal-year's-coal-severance-tax-revenue deposited--in-the-Montana-in-state-investment~~ permanent coal tax trust fund.

(2) Subsection (1) does not limit the board's authority to ~~guarantee-loans-or-bonds-or~~ make loans to the capital reserve account ~~and-guaranty-fund~~ as provided in 17-6-308(2) ~~and-(3)~~.

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the board may not exceed ~~10%~~ 1% of the Montana ~~in-state--investment~~ permanent

coal tax trust fund at the time of purchase."

Section 10. Section 17-6-314, MCA, is amended to read:

"**17-6-314. Rate of return.** In calculating the rate of return for any Montana investment to be made from the ~~Montana--in-state--investment~~ permanent coal tax trust fund, the board shall consider the long-term benefit to the Montana economy and the additional service fee discount provided for in [section 18]."

Section 11. Section 17-6-322, MCA, is amended to read:

"**17-6-322. Report.** The board shall include in its annual report a section on the results of the previous year's operations of the ~~in-state~~ investment in the Montana economy from the permanent coal tax trust fund, as required in 17-6-305, including:

(1) financial statements audited by independent auditors;

(2) a summary report of loan activity; and

(3) a comparison of the ~~Montana-in-state-investment fund's~~ performance of the investments in the Montana economy in relation to the purposes contained in 17-6-303."

Section 12. Section 90-3-101, MCA, is amended to read:

"**90-3-101. Short title -- findings -- purpose.** (1) This chapter may be cited as the "Montana Science and Technology Financing Act".

(2) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

(d) the ~~in-state--investment~~ permanent coal tax trust fund created ~~through-adoption-of-Initiative-Measure--No.--95 by--the--voters-of-Montana-in-1982~~ by Article IX, section 5, of the Montana constitution is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana;

(e) the Science and Technology Development Board Seed Capital Bond Act contained provisions that were found to be unconstitutional by the Montana supreme court, and the 51st legislature of the state of Montana must remedy those

defects through legislation; and

(f) the Montana science and technology development board has demonstrated success in forging a partnership among the private sector, the university community, and government, and this success should be continued through an ongoing legislative commitment to the board's programs.

(3) The purposes of this chapter are to:

(a) strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities;

(b) provide a funding source for the board to make seed capital project loans;

(c) provide a mechanism for the board to use in making seed capital project loans; and

(d) provide a mechanism for the board to use in making research and development project loans, the funding source of which will be provided by separate legislation."

Section 13. Section 90-3-525, MCA, is amended to read:

"90-3-525. Deposit of payback -- seed capital and research and development project loans. (1) The payback of principal and earnings on a seed capital project loan executed under this chapter ~~must-be-administered-pursuant-to~~

~~section 17-6-306.~~

~~(2)~~--~~The~~ or the payback of principal and earnings on a research and development project loan must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

~~(3)~~(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the board. The paybacks include all those received after January 1, 1989."

Section 14. Section 90-6-104, MCA, is amended to read:

"**90-6-104. General powers of the board.** The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any

persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of

redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all

investment income from funds of the board less the cost for investment as prescribed by law ~~shall~~ must be deposited in the housing authority enterprise fund;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of ~~such~~ the sale;

(15) consent, whenever it ~~deems~~ considers it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges ~~shall~~ be are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses ~~which~~ that may be

incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means~~;-and~~

~~(21)-lend-money-to-the-board-of-investments-to-establish the--Montana--economic--development-guaranty-fund-created-by 17-5-1520.~~"

Section 15. Section 90-8-102, MCA, is amended to read:

"**90-8-102. Declaration of policy.** (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden

of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by

making tax credits available to taxpayers investing in Montana capital companies;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program which that gives priority to investments in capital companies in the order in which they are qualified will encourage prompt private investment in Montana businesses.

(4) The legislature further finds that use of money from the Montana ~~in-state--investment-fund-established-by-17-6-306~~ permanent coal tax trust fund to purchase debentures issued by a capital company will promote the business prosperity and economic welfare of the state and its citizens."

Section 16. Section 90-8-305, MCA, is amended to read:

"**90-8-305. Sale of debentures.** (1) A qualified Montana capital company is authorized to issue and sell debentures to the ~~in-state--investment~~ permanent coal tax trust fund ~~established-in-17-6-306~~.

(2) Proceeds received by a qualified Montana capital company from the sale of debentures authorized in subsection (1) must be invested in accordance with the provisions of

90-8-301, except that the time periods for making qualified investments must be calculated from the date the company sells the debentures to the ~~in-state--investment~~ permanent coal tax trust fund."

NEW SECTION. **Section 17.** **Job credit interest rate reduction for small business loan participations.** (1) A borrower who uses the proceeds of a small business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created over a 2-year period to employ a Montana resident. The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last completed fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum

of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) No job credit will be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and make application in writing, through its financial institution, to the board when the loan is delivered to the board or not later than 45 days after the first and second anniversary dates of the loan.

NEW SECTION. **Section 18.** Incentive to financial institution for small business loan participation. A financial institution that originates a small business loan no larger than 0.05% of the balance of the Montana permanent coal tax trust fund at the end of the last completed fiscal year is entitled to an additional service fee in the form of a discount equal to 0.5% of the board's participation in the loan. The board shall consider the additional service fee

discount to the financial institution as part of the rate of return provided in 17-6-314.

NEW SECTION. **Section 19.** Repealer. Sections 17-5-1519, 17-5-1520, 17-6-306, and 17-6-315, MCA, are repealed.

NEW SECTION. **Section 20.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 21.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 22.** Codification instruction. [Sections 17 and 18] are intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [sections 17 and 18].

NEW SECTION. **SECTION 23.** EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1991.

-End-